

**LODI CITY COUNCIL
REGULAR CITY COUNCIL MEETING
CARNEGIE FORUM, 305 WEST PINE STREET
WEDNESDAY, APRIL 20, 2005**

C-1 CALL TO ORDER / ROLL CALL

The City Council Closed Session meeting of April 20, 2005, was called to order by Mayor Beckman at 5:32 p.m.

Present: Council Members – Hansen, Hitchcock, Johnson, Mounce, and Mayor Beckman

Absent: Council Members – None

Also Present: Deputy City Manager Keeter, City Attorney Schwabauer, and City Clerk Blackston

C-2 ANNOUNCEMENT OF CLOSED SESSION

- a) Actual litigation: Government Code §54956.9(a); two cases; Citizens for Open Government v. City of Lodi et al., San Joaquin County Superior Court Case No. CV 026002; and Lodi First v. City of Lodi et al., San Joaquin County Superior Court Case No. CV 025999
- b) Pursuant to Government Code §54956.9(c); conference with legal counsel; anticipated litigation/initiation of litigation regarding George Miers & Associates relating to design services; one potential case
- c) Actual litigation: Government Code §54956.9(a); one case; Timothy Thalken v. City of Lodi, U.S. District Court, Eastern District Case No. CV-00514-EJG-KJM
- d) Actual Litigation: Government Code §54956.9(a); one case; Lodi Professional Firefighters v. City of Lodi, California (PERB Case No. SA-CE-293-M)
- e) Prospective acquisition of real property located at 14320 N. Lower Sacramento Road, Lodi, California (APN #058-140-13); the negotiating parties are City of Lodi and M. Bill Peterson; Government Code §54956.8
- f) Actual litigation: Government Code §54956.9(a); one case; People of the State of California; and the City of Lodi, California v. M & P Investments, et al.; United States District Court, Eastern District of California, Case No. CIV-S-00-2441 FCD JFM
- g) Actual litigation: Government Code §54956.9(a); one case; Hartford Accident and Indemnity Company, et al. v. City of Lodi, et al., Superior Court, County of San Francisco, Case No. 323658
- h) Conference with legal counsel – initiation of litigation: Government Code §54956.9(c); two cases
- i) Conference with legal counsel – anticipated litigation – significant exposure to litigation pursuant to subdivision (b) of Section 54956.9; one case; pursuant to Government Code §54956.9(b)(3)(A) facts, due to not being known to potential plaintiffs, shall not be disclosed
- j) Actual litigation: Government Code §54956.9(a); one case; Fireman's Fund Insurance Company v. City of Lodi, et al., United States District Court, Eastern District of California Case No. CIV-S-98-1489 FCD JFM
- k) Actual litigation: Government Code §54956.9(a); one case; City of Lodi v. Michael C. Donovan, an individual; Envision Law Group, LLP, et al., San Joaquin County Superior Court, Case No. CV025569
- l) Actual litigation: Government Code §54956.9(a); one case; Environmental Forensic Investigations, Inc. v. City of Lodi, San Joaquin County Superior Court, Case No. CV-024899
- m) Actual litigation: Government Code §54956.9(a); one case; Farr Associates v. City of Lodi, San Joaquin County Superior Court, Case No. CV-025075
- n) Actual Litigation: Government Code §54956.9(a); one case; Magellan Environmental, Inc. v. City of Lodi, San Joaquin County Superior Court, Case No. CV-024898

C-3 ADJOURN TO CLOSED SESSION

At 5:32 p.m., Mayor Beckman adjourned the meeting to a Closed Session to discuss the above matters.

The Closed Session adjourned at 6:58 p.m.

C-4 RETURN TO OPEN SESSION / DISCLOSURE OF ACTION

At 7:01 p.m., Mayor Beckman reconvened the City Council meeting, and City Attorney Schwabauer disclosed the following actions.

In regard to Item C-2 (a), no reportable action was taken in closed session.

In regard to Item C-2 (b), Council unanimously approved a settlement with George Miers & Associates. The terms of the settlement are that the City will retain its \$47,000 retention on the project in exchange for a waiver of its \$53,000 claim for design defects that the City contends existed. The City will pay George Miers & Associates \$80,000 that is due for design work on the animal shelter facility.

In regard to Items C-2 (c), (d), (f), and (l), Council provided direction.

In regard to Item C-2 (e), Council approved an acquisition agreement with M. Bill Peterson. The City will pay \$30,000 for the property and Mr. Peterson will agree to record a lien against his property under the terms of the agreement for \$30,000 plus interest, which will be repaid at the time the property develops.

Items C-2 (g), (h), (i), (j), (k), (m), and (n) were not discussed in closed session.

A. CALL TO ORDER / ROLL CALL

The Regular City Council meeting of April 20, 2005 was called to order by Mayor Beckman at 7:01 p.m.

Present: Council Members – Hansen, Hitchcock, Johnson, Mounce, and Mayor Beckman

Absent: Council Members – None

Also Present: Deputy City Manager Keeter, City Attorney Schwabauer, and City Clerk Blackston

B. INVOCATION

The invocation was given by Reverend Michael Voytek, Providence Reformed Church.

C. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Mayor Beckman.

D. AWARDS / PROCLAMATIONS / PRESENTATIONS

D-1 (a) Christine Lavond, President of the Library Board of Trustees, presented the 2005 Bob Hildreth Library Volunteer of the Year Award to Janet Berreth.

D-1 (b) Following introductory comments by Community Improvement Manager Wood, Mayor Beckman presented the Community Improvement Award to Gwendolyn Thomas for her residential property at 913 N. Church Street.

D-2 (a) Mayor Beckman presented a proclamation to Lorraine Kildall, President of the Stockton Area Youth Temperance Council, proclaiming the week of April 25 – 30 as "Youth Temperance Education Week" in the City of Lodi.

D-2 (b) Mayor Beckman presented a proclamation to David Duncan, local Certified Public Accountant, proclaiming the month of April 2005 as "Financial Literacy Month" in the City of Lodi.

D-2 (c) Mayor Beckman presented a proclamation to Joelle Gomez, Executive Director of the San Joaquin County Women's Center, proclaiming the month of April 2005 as "Sexual Assault Awareness Month" in the City of Lodi.

D-2 (d) Mayor Beckman presented a proclamation to Rodney Cordero, representing Lodi Professional Firefighters, setting forth Saturday, May 7, 2005, as the date for the Firefighter Muscular Dystrophy Association "Fill the Boot" fundraiser.

D-3 Presentations – None

E. CONSENT CALENDAR

In accordance with the report and recommendation of the City Manager, Council, on motion of Mayor Pro Tempore Hitchcock, Johnson second, unanimously approved the following items hereinafter set forth **except those otherwise noted**:

E-1 Claims were approved in the amount of \$5,484,846.65.

E-2 The minutes of March 15, 2005 (Shirtsleeve Session), March 30, 2005 (Special Meeting), and April 6, 2005 (Regular Meeting) were approved as written.

E-3 Adopted Resolution No. 2005-70 approving specifications, authorizing advertisement for bids for White Slough Water Pollution Control Facility purchase of primary sedimentation basin fiberglass effluent troughs, and authorizing the City Manager to approve the purchase in the amount of \$15,000.

E-4 Adopted Resolution No. 2005-71 rejecting all bids for the purchase of Fire Department radio base station emergency alerting system.

E-5 "Approve Task Order with West Yost & Associates for study and recommendation for full implementation of Woodbridge Irrigation District surface water supply and appropriate funds (\$30,000)" was **removed from the Consent Calendar and discussed and acted upon following approval of the Consent Calendar**.

E-6 Adopted Resolution No. 2005-72 authorizing the City Manager to enter into contracts to purchase and/or reactivate replacement granular activated carbon for DBCP treatment systems at City drinking water wells in the amount of \$230,000.

E-7 Authorized repair of the submersible pump and motor for Well No. 9, 358 Shady Acres Drive.

E-8 Adopted Resolution No. 2005-73 accepting the development improvements at 715 South Guild Avenue.

E-9 Accepted improvements under "White Slough Water Pollution Control Facility Year 2003 Interim Improvements Project" contract and received notification of Contract Change Order.

E-10 Authorized the City Manager, or his designee, to execute a Memorandum of Understanding between the Mokelumne River Forum and the California Department of Water Resources.

E-11 Adopted Resolution No. 2005-74 authorizing the termination of an existing rental/lease agreement for the After School Lodi LOOK building between Mee-Lease Portable Buildings, of Lodi, and the City of Lodi and approve the purchase of the building from Mee-Lease Portable Buildings with previously approved Community Development Block Grant funding in the amount of \$26,944.

- E-12 Adopted Resolution No. 2005-75 authorizing the City Manager to execute support services contract assignment from PeopleSoft (formerly J.D. Edwards) to Oracle Corporation.
 - E-13 Adopted Resolution No. 2005-76 authorizing staff to solicit proposals for a one-year floral and event-planning service contract for Hutchins Street Square facilities and authorizing the City Manager to award or reject the contract.
 - E-14 Adopted Resolution of Vacation No. 2005-77 to abandon portions of ten-foot public utility easement at 1901, 1927, and 1930 South Mills Avenue.
 - E-15 Adopted Resolution of Intention No. 2005-78 to abandon five-foot public utility easement at 2024 Kettleman Lane; referred the matter to the Planning Commission; and set public hearing for June 1, 2005.
 - E-16 Set public hearing for May 4, 2005, to review and adopt revised Community Development Department fees.
 - E-17 Set public hearing for May 18, 2005, to consider objections or protests to the Cost of Repairs Report for sidewalk repairs at 633 Holly Drive and to confirm Report as submitted by the Superintendent of Streets.
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ACTION ON ITEM REMOVED FROM THE CONSENT CALENDAR

- E-5 "Approve Task Order with West Yost & Associates for study and recommendation for full implementation of Woodbridge Irrigation District surface water supply and appropriate funds (\$30,000)"

Deputy City Manager Keeter commented that a Shirtsleeve Session was held on April 19, 2005 to discuss this matter.

Public Works Director Prima reported that the City is in the second year of a contract with Woodbridge Irrigation District (WID) to purchase 6,000 acre feet of water annually. The City is spending \$1.2 million a year for the water; however, it has not yet begun utilizing it. For a period of three years, the City can bank the water on paper and obtain it in future years. Staff will be asking the WID for an extension of the "banking" period. Mr. Prima reported that the current water use for the entire City is just over 16,000 acre feet. All of Lodi's water comes from groundwater; currently there are 27 wells. Lodi draws from the eastern San Joaquin basin, which runs from the Consumnes River down to the Stanislaus River. This basin is being over drafted, and as a consequence, the groundwater levels have been dropping. A safe yield prorated to Lodi would be approximately 12,000 acre feet. After the City entered into the contract with WID, a study was commissioned to look at a variety of options for how the water could be utilized. The "Option Supply Report" considered using water for non-potable uses such as irrigation for parks and schools, injection wells, recharge ponds, and treating the water for drinking. Staff now feels that the list of alternatives should be narrowed down and recommends that the proposed task order with West Yost & Associates be approved. Its study will consider the alternatives in more detail and include both capital, and operations and maintenance costs.

Council Member Hansen recalled that the reason for purchasing the WID water was to replenish the underground water supply and he questioned why that no longer appears to be the priority option from staff's perspective.

Mr. Prima explained that the groundwater basin, which Lodi shares with outlying areas, is over drafted by 100,000 to 200,000 acre feet a year. Recharging would not have a significant effect on the water level in Lodi. He did acknowledge that groundwater injection would raise the water level in the immediate vicinity of the well.

Mayor Beckman clarified that the water in question is coming from the Mokelumne River that the WID has rights to. WID had been selling it to farmers west of Lodi and that water is no longer going into the groundwater basin. WID had the option of doing something different with the water and it not coming to this region; however, by the City buying it, it ensures that the water comes to Lodi.

Mayor Pro Tempore Hitchcock agreed with Council Member Hansen's recollection. She expressed concern that Council may only be hearing part of the options and wondered if a development project was driving the issue. She emphasized that water issues are a significant part of the City's General Plan and the larger subject of Lodi's future needs should be considered before making decisions on smaller issues in an effort to proceed with a development project. She also voiced concern about projects coming before Council that are using a very old Environmental Impact Report (EIR) that is no longer valid.

Mr. Prima replied that, from the water standpoint, he thought the development being considered on the west side is consistent with the General Plan. He stated that the City is complying with changes that have taken place in state law related to how water supply issues are considered with new development. Mr. Prima reported that a water supply assessment has been done, which indicates that Lodi needs to utilize the WID water to help meet its future demands.

In reply to Mayor Pro Tempore Hitchcock, Deputy City Manager Keeter stated that she believed a Negative Declaration would be done for the proposed west side project. Ms. Hitchcock was opposed to this, as it meant that the master EIR from the General Plan would be used for the project.

Mr. Prima acknowledged that all the discussion two years ago (when the WID water purchase was being considered) was focused on helping to mitigate the overdraft. Groundwater injection within Lodi would have an impact on water levels in the City. A groundwater recharge spreading basin south of Lodi would have less of an impact on water levels in the City. A surface water plant would allow some wells to be turned off throughout the year and pump less water, which would slightly increase the water levels in Lodi.

Council Member Hansen emphasized that he wanted to increase the availability of water for the citizens of Lodi, explaining that Council's responsibility is to the ratepayers who are paying for the WID water. He did not want to take a regional perspective on this matter.

MOTION:

Council Member Mounce made a motion, Beckman second, to approve Task Order with West Yost & Associates for study and recommendation for full implementation of Woodbridge Irrigation District surface water supply and appropriated funds in the amount of \$30,000.

DISCUSSION:

Mayor Pro Tempore Hitchcock pointed out Mr. Prima had indicated that the state has changed the way development projects are approved, i.e. sufficient water supply must be available. She believed that the WID water must be used in order to approve the proposed west side project. Ms. Hitchcock explained that she would vote against the motion because she believed the only reason the matter was before Council was due to the project. She reiterated that the long-term, overall plan of water in the City of Lodi should be considered first.

Mr. Prima acknowledged that staff was late in bringing this matter forward to Council. He explained that the linkage to development would occur when the project comes before the City for approval and a charge is made based on either a surface water plant, groundwater recharge program, or some other option. The water supply assessment has already been done, which shows there is adequate water for the project.

PUBLIC COMMENTS:

- Charles Ackel asked whether anyone had considered how the water options would interact with efforts to remediate the groundwater contamination.

City Attorney Schwabauer replied that if the City had to shut off wells and it had a surface water treatment plant, the WID water could be used to make up for the loss of the wells. If the City were to install a groundwater recharge facility in the area, or above a plume, it could affect the movement of the plume. These situations would be part of the analysis done prior to selecting an option or location.

VOTE:

The above motion carried by the following vote:

Ayes: Council Members – Hansen, Johnson, Mounce, and Mayor Beckman

Noes: Council Members – Hitchcock

Absent: Council Members – None

PUBLIC COMMENTS:

- Ann Cerney stated that there is no way to divorce the topics of air, water, and traffic from the growth issue. She questioned the fact that this matter is now before Council just prior to two large subdivisions coming forward. She commented that sensible growth is a long-term issue, provided it is handled correctly.

F. COMMENTS BY THE PUBLIC ON NON-AGENDA ITEMS

None.

G. COMMENTS BY CITY COUNCIL MEMBERS ON NON-AGENDA ITEMS

None.

H. COMMENTS BY THE CITY MANAGER ON NON-AGENDA ITEMS

- Deputy City Manager Keeter reminded Council that a softball game fundraiser for the Boys & Girls Club was scheduled for Sunday.

I. PUBLIC HEARINGS

- I-1 Notice thereof having been published according to law, an affidavit of which publication is on file in the office of the City Clerk, Mayor Beckman called for the public hearing to consider resolution adopting water rate increase.

Public Works Director Prima recalled that in the spring of 2004 Council approved a rate increase for water service, which included provisions for future rate adjustments based on the Consumer Price Index (CPI). The CPI over the past year was 2.2%.

Hearing Opened to the Public

- Eileen St. Yves pointed out that the City operates on a fiscal year and small businesses operate on a standard calendar year. She questioned how business owners will know in advance what the CPI increase will be.

City Attorney Schwabauer stated that landlords could include a provision in their leases that ties to the San Francisco-Oakland-San Jose CPI.

- Ann Cerney suggested that the City allow a one-time adjustment for impoverished citizens, to which Council Member Hansen informed her a Low Income Discount Program had already been established.

Public Portion of Hearing Closed

MOTION / VOTE:

The City Council, on motion of Council Member Hansen, Johnson second, unanimously adopted Resolution No. 2005-79 adopting water rate increase.

J. COMMUNICATIONS

J-1 Claims filed against the City of Lodi – None

J-2 The following postings/appointments were made:

- a) The City Council, on motion of Council Member Johnson, Beckman second, unanimously directed the City Clerk to post for the following vacancy and expiring terms:

Lodi Improvement Committee

Martin Makapagal Term to expire March 1, 2007

Library Board of Trustees

Juan Villarreal Term to expire June 30, 2005

Lodi Arts Commission

Judy Bader Term to expire July 1, 2005

John Callahan Term to expire July 1, 2005

Ann Falos Term to expire July 1, 2005

Cynthia Inman Term to expire July 1, 2005

Planning Commission

Tim Mattheis Term to expire June 30, 2005

David Phillips Term to expire June 30, 2005

J-3 Miscellaneous – None

K. REGULAR CALENDAR

K-1 “Adopt resolution authorizing the City Manager to allocate \$51,000 in Public Benefit Program funds for the *Lodi Solar Rooftops Pilot Project*”

Rob Lechner, Manager of Customer Service and Programs, reported that the Lodi Solar Rooftops Pilot Project is designed to promote solar energy technology and earmarks \$51,000 in Public Benefit Program funds. Eligible customers will have the opportunity to receive a rebate up to \$5,100 based on \$1,700 per kilowatt installed at home, with a maximum of a three kilowatt system. A three kilowatt photovoltaic/solar panel would meet 20% to 60% of monthly energy needs. The average three kilowatt system would cost between \$18,000 and \$22,000. A workshop will be held on May 23 at which 20 certified and licensed solar installation contractors have been invited. A recommendation to decrease the incentive amounts for various other programs will be brought to Council in June and July.

Council Member Johnson expressed concern about lessening programs that a greater number of people can qualify for, e.g. appliance rebates, dual paned windows, etc.

Mr. Lechner commented that over 500 home inspections have been done in the past 18 months; however, only 20 homeowners have decided to actually make the recommended improvements. He suggested that more Public Benefit Program dollars go toward home air delivery systems. Electric Utility wants to shift attention to new and emerging technology such as solar, and perform energy audits and educational workshops.

Mayor Pro Tempore Hitchcock suggested that a future presentation be given to Council regarding divisions of the Public Benefits Program and how funds have been spent.

MOTION:

Council Member Mounce made a motion, Hansen second, to adopt Resolution No. 2005-80 authorizing the City Manager to allocate \$51,000 in Public Benefit Program funds for the *Lodi Solar Rooftops Pilot Project*.

PUBLIC COMMENTS:

- Charles Ackel asked whether commercial and industrial properties would be eligible for this program and if there was an incentive being offered for excess solar power to be purchased by the Utility.

Mr. Lechner replied that the program is designed for small commercial and residential customers. There is funding available for large industrial businesses through other sources. If, after a 12-month cycle, customers have generated more than they have consumed, Electric Utility will buy back the power at the current rate.

VOTE:

The above motion carried by a unanimous vote.

RECESS

At 8:46 p.m., Mayor Beckman called for a recess, and the City Council meeting reconvened at 8:56 p.m.

K. REGULAR CALENDAR (Continued)

K-2 "Adopt the following ordinance AND resolution:

"a) Adopt Ordinance No. 1759 entitled, "An Ordinance Adopting that Portion of the State Building Standards Code that Imposes Substantially the Same Requirements as are Contained in the Uniform Fire Code, 2000 Edition, Published by the Western Fire Chiefs Association and the California Building Standards Commission with Errata, Together with those Portions of the 'Uniform Fire Code, 2000 Edition' and the Appendixes, the Uniform Fire Code Standards, '1997 Edition,' as Amended by the 'Uniform Fire Code Standards, 2000 Edition,' Published by the Western Fire Chiefs Association, Not Included in the State Building Standards Code, as Modified and Amended by this Chapter, are Adopted by this Reference into this Chapter and are Hereby Collectively Declared to be the City of Lodi Fire Code; Thereto, Which Code Provides Regulations Governing the Conditions Hazardous to Life and Property from Fire or Explosion; Repealing and Reenacting Sections 15.20.010 Through 15.20.460 Inclusive and Section 9.12.010 of the Code of the City of Lodi and All Other Ordinances and Parts of Ordinances in Conflict Therewith, as well as Errors and Inconsistencies within Chapter 15.40 – On Site Fire Protection Sections 15.40.020, 15.40.100, and 15.40.110" (CLK)"

Fire Chief Pretz explained that the resolution will establish the master permit fee schedule. The ordinance incorporates the State Fire Code into what will become known as the Lodi City Fire Code. The proposed ordinance will also correct language discrepancies, definitions, and inconsistencies between the current Lodi Fire Code and the California State Fire Code.

Mayor Beckman did not support the section of the ordinance that adds new permit requirements for Christmas tree lots, Halloween haunted houses, and other special events.

Fire Marshal Verne Person noted that there was no fee associated with the three new permits Mr. Beckman outlined. He explained that assembly occupancies have to be inspected.

MOTION / VOTE:

Following reading of the title of Ordinance No. 1759 entitled, "An Ordinance Adopting that Portion of the State Building Standards Code that Imposes Substantially the Same Requirements as are Contained in the Uniform Fire Code, 2000 Edition, Published by the Western Fire Chiefs Association and the California Building Standards Commission with Errata, Together with those Portions of the 'Uniform Fire Code, 2000 Edition' and the Appendixes, the Uniform Fire Code Standards, '1997 Edition,' as Amended by the 'Uniform Fire Code Standards, 2000 Edition,' Published by the Western Fire Chiefs Association, Not Included in the State Building Standards Code, as Modified and Amended by this Chapter, are Adopted by this Reference into this Chapter and are Hereby Collectively Declared to be the City of Lodi Fire Code; Thereto, Which Code Provides Regulations Governing the Conditions Hazardous to Life and Property from Fire or Explosion; Repealing and Reenacting Sections 15.20.010 Through 15.20.460 Inclusive and Section 9.12.010 of the Code of the City of Lodi and All Other Ordinances and Parts of Ordinances in Conflict Therewith, as well as Errors and Inconsistencies within Chapter 15.40 – On Site Fire Protection Sections 15.40.020, 15.40.100, and 15.40.110," having been introduced at a regular meeting of the Lodi City Council held April 6, 2005, the City Council, on motion of Council Member Johnson, Hansen second, waived reading of the ordinance in full and adopted and ordered it to print by the following vote:

Ayes: Council Members – Hansen, Hitchcock, Johnson, and Mounce
Noes: Council Members – Mayor Beckman
Absent: Council Members – None
Abstain: Council Members – None

"b) Adopt resolution establishing a master fee schedule for cost recovery of services provided by the Lodi Fire Department"

Fire Marshal Person reported that the purpose of the resolution was to implement a cost recovery program for inspections, development review, required permits, and miscellaneous administrative activities. The Fire Department proposes to re-implement an inspection program and through the resolution proposes a mechanism for cost recovery of services provided. All annual permits listed in the proposal are required by the State Fire Code. He highlighted the following components:

State Mandated Inspections

The Fire Department has not received any opposition to state mandated inspections or the associated fees. Business inspections ensure the safest conditions possible for employees, customers, and business owners. A three-year rotation is planned, i.e. one on-site inspection by an engine or truck company will take place and the two subsequent years will be self-inspections. The engine and truck companies will conduct the initial and one follow-up inspection at no charge. Only if the business remains non-compliant will the Fire Prevention Bureau get involved and fees imposed.

Development Review

Plan reviews and accompanying inspections are required to assure safe construction and building operations. Fees associated with plan review are recognized as reasonable and necessary by local contractors and developers, as well as the Building Industry Association.

Miscellaneous Administrative Charges

Examples include fees for excessive false alarms, data searches, standby personnel, and restitution for criminal or negligent acts.

State Fire Code Permits

The Fire Prevention Bureau recognizes that certain industries must comply with stringent insurance company inspection requirements and must conform to State and County regulations. In those cases, the Fire Prevention Bureau will review the insurance inspection documentation, conduct the inspections, and issue permits if appropriate.

In answer to Council Member Hansen, Chief Pretz stated that the Fire Department has no intention of adding staff to conduct the inspection program. He reported that staff is unsure what additional expenses may be involved in performing the inspections.

Mayor Beckman pointed out that, of the 48 inspections listed, only eight have been done previously. He was in agreement with charging for the eight inspections that the Fire Department has been performing and was opposed to the proposal of charging for the 40 new inspections.

Mayor Pro Tempore Hitchcock felt that it was an equity issue in terms of who should bear the cost. She contended that the inspection fee should be borne by the business instead of the taxpayer from the General Fund.

Council Member Hansen pointed out that businesses pay taxes also. He was opposed to charging a fee because the City would not be incurring additional costs.

Council Member Mounce expressed agreement with Ms. Hitchcock's position.

Council Member Johnson felt that if the concept of cost recovery for services is to be fully instituted then it should be implemented for all users. He pointed out that the Fire Department's proposal did not include a fee for apartment inspections.

PUBLIC COMMENTS:

- Eileen St. Yves noted that some business buildings downtown are very old, have false ceilings, walls have been moved, etc., which increases the need for inspections. She was not opposed to charging for apartments of four units or more if it is done according to "actual cost," rather than "full cost" recovery.
- Charles Ackel stated that one of the most basic services that property taxes pay for is public safety. Commercial and industrial businesses pay a lot of property tax. Many Lodi businesses are smaller than those in Sacramento and Stockton. Costs have to be passed on to customers and this proposal will make Lodi businesses slightly less competitive. He believed that the proposed inspection fee schedule would be an invitation for abuse and cited the examples of multiple violations being issued for purposes of increasing City revenue or for potential promotional gain of a Fire Department representative.
- Ron Kreutner, Board Chair of the Lodi Chamber of Commerce, read a memorandum from the Chamber Board of Directors and reviewed survey results (both filed). The Board indicated that a more user friendly and easier to understand pricing plan would be preferable. The Chamber objected to fees associated with tents, canopies, and temporary membrane structures, as these are often used at fundraising events by charities and non-profit organizations. The survey responses showed a high degree of confusion. The Chamber urged the Council and City Manager to work with the business community before beginning to levy the new fees.

Mayor Pro Tempore Hitchcock concurred with Mr. Johnson's comments related to apartment building inspections. She was opposed to charging inspection fees to charities, as they do not have a consistent revenue stream.

MOTION #1:

Mayor Pro Tempore Hitchcock made a motion, Mounce second, to adopt the resolution, as presented, establishing a Master Fee Schedule for annual permits to operate new development and tenant improvement plans review, fire and life safety inspections, and other miscellaneous services provided by the City of Lodi Fire Department.

DISCUSSION:

Deputy City Manager Keeter interjected that the Fire Department's budget is \$7.3 million and the Police Department's budget is \$12 million. Property taxes bring in \$5.8 million and sales tax \$9.2 million. Consequently, these taxes do not cover the cost of providing Police and Fire services.

VOTE:

The above motion **failed** by the following vote:

Ayes: Council Members – Hitchcock and Mounce

Noes: Council Members – Hansen, Johnson, and Mayor Beckman

Absent: Council Members – None

The City Council further adopted Resolution No. 2005-81 establishing a Master Fee Schedule for annual permits to operate new development and tenant improvement plans review, fire and life safety inspections, and other miscellaneous services provided by the City of Lodi Fire Department **by the following votes:**

MOTION #2:

Council Member Hansen made a motion, Mounce second, to adopt the Annual Fire and Life Safety Inspections fees.

DISCUSSION:

Mayor Pro Tempore Hitchcock suggested that the same fee as is applied to Hotels/Motels be applied to apartments.

MOTION AMENDED:

Council Member Hansen amended his motion to include the following amendment:

R-1 Occupancies – Apartments

3 – 16 Units 112.50 +

17 – 32 Units 150.00 +

>= 33 Units 187.50 +

VOTE:

The above motion, as amended, carried by a unanimous vote.

MOTION #3 / VOTE:

The City Council, on motion of Mayor Beckman, Hitchcock second, adopted the Business Fire and Life Safety Inspections fees by the following vote:

Ayes: Council Members – Hitchcock, Mounce, and Mayor Beckman

Noes: Council Members – Hansen and Johnson

Absent: Council Members – None

MOTION #4 / VOTE:

The City Council, on motion of Mayor Beckman, Mounce second, unanimously adopted the New Development and Tenant Improvements Plans Review fees.

MOTION #5:

Mayor Beckman made a motion, Hitchcock second, to adopt the Miscellaneous fees.

DISCUSSION:

In response to Council Member Hansen, City Attorney Schwabauer reported that there was pending litigation relating to Driving Under the Influence (DUI) emergency response fees. Mr. Hansen suggested that the fee not be included until the matter is resolved.

MOTION AMENDED:

Mayor Beckman amended his motion to include the elimination of Emergency Response for DUI (\$131.00).

In reply to Council Member Johnson, City Attorney Schwabauer reported that the fee to appeal a Planning Commission decision was \$250.

Mayor Beckman amended his motion to include a decrease in Administrative Charge, Appeals from \$375 to \$250.

VOTE:

The above motion, as amended, carried by a unanimous vote.

MOTION #6 / VOTE:

Mayor Pro Tempore Hitchcock made a motion, Mounce second, to adopt the Annual Operating Permits and Inspections fees.

DISCUSSION:

Mayor Beckman stated that he did not support the fees listed under Annual Operating Permits and Inspections.

Council Member Hansen also expressed opposition, as he felt the fees were not business friendly. He reiterated that the City is not incurring any additional cost to do the inspections. Mr. Hansen added that if the City were faced with a dire financial need in the future and required the funds to stay afloat, he would consider instituting them.

VOTE:

The above motion **failed** by the following vote:

Ayes: Council Members – Hitchcock and Mounce

Noes: Council Members – Hansen, Johnson, and Mayor Beckman

Absent: Council Members – None

- K-3 “Adopt resolution approving plans and specifications; authorizing advertisement for bids for Lighted Crosswalk/Flashing Beacon Project; Elm Street at Loma Drive and at Mills Avenue, and on Mills Avenue (various locations); and authorizing the City Manager to execute agreements to implement the project”

Paula Fernandez, Senior Traffic Engineer, reported that, prior to the construction of the Millswood Middle School, staff applied for the State's Safe Route to School grant funds for the “bulb outs” at the intersection of Mills Avenue and Elm Street. She recalled that this matter was also discussed at the Shirtsleeve Session on February 24, 2004. The State authorized a one-year extension. Staff performed additional counts and met with school

staff to discuss various improvements. Due to additional school traffic, staff is not recommending the bulb outs or curb extensions at the intersection, as it would adversely affect the traffic flow at the intersection and add more congestion. Staff is now making the following recommendations: 1) a flashing lighted crosswalk at Elm Street and Loma Drive with lighted signage; 2) four-way flashing beacon and lighting at Elm Street and Mills Avenue, and 3) four yellow flashing beacons, at entrance of Reese Elementary School zone. Ms. Fernandez noted that the funds are specifically for the Reese Elementary School. There are 170 school age pedestrians crossing the uncontrolled intersection of Elm Street and Loma Drive. School and City staff have agreed to the proposed improvements. The State approved a scope modification to the grant.

Council Member Hansen asked staff to include in the next grant application the location of Elm Street and Pacific Avenue for a lighted crosswalk.

Mayor Pro Tempore Hitchcock expressed concern that this action might set a standard for school crosswalks.

City Attorney Schwabauer replied that the standard is being set around Lodi by other cities. He felt that by not installing lighted crosswalks when the opportunity presents itself, the City would set itself up for liability by failing to do so.

MOTION / VOTE:

The City Council, on motion of Council Member Mounce, Beckman second, unanimously adopted Resolution No. 2005-82 approving plans and specifications; authorizing advertisement for bids for Lighted Crosswalk/Flashing Beacon Project; Elm Street at Loma Drive and at Mills Avenue, and on Mills Avenue (various locations); and authorizing the City Manager to execute agreements to implement the project.

- K-4 "Review and discuss revised fiscal year 2005-06 Budget Calendar and schedule a Special Council meeting on Wednesday, May 11 at 6:30 p.m. for budget presentation"

Finance Director Krueger reviewed the budget calendar (filed).

MOTION / VOTE:

There was no Council action taken on this matter.

RECESS

At 10:41 p.m., Mayor Beckman called for a recess, and the City Council meeting reconvened at 10:46 p.m.

K. REGULAR CALENDAR (Continued)

- K-5 "Receive quarterly financial report with results of operations through March 31, 2005"

Finance Director Krueger reviewed the Quarterly Financial Report (filed). Revenue estimates made at the beginning of the year showed a total of \$39,773,992 in the General Fund. It is expected that the City will receive \$5.8 million in property tax. He suggested that the policy be reviewed regarding how much property tax the City allocates to the library and to the repayment of the debt service. The original estimate of sales tax was \$9,105,000. There was an additional \$500,000 that was placed in Other Sources & Uses. It now appears that the City will receive a total of \$9,200,000 in sales tax revenue. The category of Other Taxes, originally estimated at \$10,563,000, includes amounts from Electric Utility, Water, Wastewater, business tax, and Transient Occupancy Tax. Due to an increase in the amount of revenue being generated by Electric Utility, the expectation is that the City will have \$10,952,000 in Other Taxes. Actual revenue to date for licenses and permits is \$987,000.

In answer to Council inquiries, Mr. Krueger explained that the difference between the projected and actual amount in Public Safety Fees is related to the Fire Department's First Response Fees that have not materialized. The increase in Administrative Fees is due to an increase of late charges.

Mr. Krueger reviewed amounts expended to date by departments. He recommended that the budgets in Police and Fire be adjusted, as they are projected to exceed their budgets for 2004-05. He explained that the Memorandum of Understanding (MOU) for the Fire Department bargaining unit was approved in October 2003, subsequent to the publishing of the 2003-05 budget document. No adjustments were made in 2004-05 either, to reflect the MOU changes. The MOU for the Police Department was adopted more recently. There were no numbers tied to how much the Police Department budget needed to be adjusted in order to reflect the increased dollar amounts associated with the MOU. All other departments in the City appear as though they will have savings at the end of the year. Departments will be asked not to make purchases beyond May 6, in order to maintain the projected savings. Public Works will spend more than its budgeted amount because citywide utilities are incorporated in its budget and electricity costs have increased. Expenditures in the City Manager's Office were made that were not anticipated at the time the 2004-05 budget was prepared, and adjustments will need to be made accordingly. In addition, there were expenses in the City Attorney's Office related to outside legal expenses that were not previously anticipated.

City Attorney Schwabauer explained that the obligation for managing the *Liebert, Cassidy, Whitmore* contract was shifted to the City Attorney's Office from Human Resources.

Deputy City Manager Keeter recalled that staff brought to Council in February the *Liebert, Cassidy, Whitmore* contract that had been signed administratively. At that time, staff stipulated that it needed to have past costs approved for payment, as well as future costs through June 2005.

Mayor Pro Tempore Hitchcock questioned whether this would have more appropriately been allocated under Liabilities, where the City's actuary projects such losses.

Mr. Krueger responded that he would conduct a more detailed analysis on the subject and report back to Council.

Mr. Krueger reported that part of what is included in the fund balance calculation for the General Fund are receivables, e.g. sales and property tax. He explained that this causes the imbalance between revenues and expenditures to right itself; however, it does not mean that the City has much cash in the General Fund at the end of the fiscal year. He stated that the Library Fund will see a \$61,000 difference between what was anticipated in property taxes versus what is expected at the end of the fiscal year. The Library will have a \$757,000 ending cash fund balance. The Capital Outlay Fund began the year with \$6.9 million and it is expected to increase slightly by the end of this fiscal year. There is \$1 million in the "unreserved" category in the Capital Outlay Fund. Most of that balance is related to impact mitigation fees. Mr. Krueger recommended that the \$2.4 million loaned to this account be paid back to Electric Utility by the end of the fiscal year. Community Development Block Grant Funds include \$2.2 million from previous year's allocations that have not yet been spent. The Police Special Revenue Fund will have a balance of \$276,000 at the end of the fiscal year. The Water Utility Fund began the year with a \$1.7 million fund balance. Included in the Water Utility Fund are maintenance and operations, water rates, impact mitigation fees, and monies charged for infrastructure replacement. Environmental Abatement Program expenditures from past years have been recorded in the Water Fund. It is anticipated that the Water Fund will have \$1.4 million at the end of the fiscal year. Not included in the presentation is \$16.5 million borrowed last year (in the Wastewater Utility Fund) that has not been expended. Electric Utility began the year with \$9.9 million and is expected to have \$2.3 million in cash at the end of this fiscal year. The cost of purchasing

power is the primary reason for the decrease in its fund balance. The cash balance at the end of the last fiscal year included an amount that was designated for debt service. The debt service was not due until July 1 and it was "cash on hand" (\$2.6 million) that needed to be dedicated for the debt service payment. Part of the payment that was made to the Northern California Power Agency (NCPA) included an amount associated with the bankruptcy of Pacific Gas and Electric.

Mayor Pro Tempore Hitchcock expressed surprise that the Council had not been informed previously about the financial condition of the Electric Utility and asked whether there was a plan to come forward with an adjustment in the Electric Utility rate structure, to which Ms. Keeter answered in the affirmative.

In reply to Ms. Hitchcock, Mr. Krueger reported that the balance does not include the \$2.4 million that was borrowed.

Mr. Krueger reported that a meeting with NCPA representatives would be held tomorrow to discuss how they view the cash position of the City of Lodi Electric Utility operation in comparison to other NCPA entities.

Council Member Hansen stated that there have been a series of meetings regarding the joint powers agreement with NCPA. The most important challenge for the Electric Utility for the rest of this budget year was to ensure that it had the ability locked in to purchase the power the City needs at a price it could afford. He expressed optimism that this would occur.

MOTION / VOTE:

There was no Council action taken on this matter.

VOTE TO CONTINUE WITH THE REMAINDER OF THE MEETING

The City Council, on motion of Mayor Beckman, Hitchcock second, voted to continue with the remainder of the meeting following the 11:00 p.m. hour. The motion carried by the following vote:

Ayes: Council Members – Hitchcock, Johnson, Mounce, and Mayor Beckman

Noes: Council Members – Hansen

Absent: Council Members – None

K. REGULAR CALENDAR (Continued)

K-6 "Adopt resolution establishing the Lodi Budget/Finance Committee"

Deputy City Manager Keeter recommended that Council establish a Budget/Finance Committee that would be comprised of seven members. Four of the seven members would serve for four-year terms, and three for three-year terms. One member would be selected by each Council Member and the remaining two from Council ranking of applications received. Future vacancies would be appointed by the Mayor and confirmed by Council.

MOTION / VOTE:

The City Council, on motion of Council Member Hansen, Beckman second, unanimously adopted Resolution No. 2005-83 establishing the Lodi Budget/Finance Committee, and further directed the City Manager to provide Council with a report at the conclusion of one year following formation of the Lodi Budget/Finance Committee regarding its effectiveness.

K-7 "Approve expenses incurred by outside counsel/consultants relative to the Environmental Abatement Program litigation and other various cases being handled by outside counsel (\$269,714.26) and approve Special Allocation covering general litigation matter expenses (\$4,783.97)"

City Attorney Schwabauer reviewed invoices from the City's outside counsel, as were outlined in the staff report (filed).

MOTION / VOTE:

The City Council, on motion of Mayor Beckman, Hitchcock second, unanimously approved expenses incurred by outside counsel/consultants relative to the Environmental Abatement Program litigation and other various cases being handled by outside counsel in the amount of \$269,714.26 and approved Special Allocation covering general litigation matter expenses in the amount \$4,783.97.

L. ORDINANCES

None.

M. ADJOURNMENT

There being no further business to come before the City Council, the meeting was adjourned at 12:05 a.m., Thursday, April 21, 2005.

ATTEST:

Susan J. Blackston
City Clerk